Yap Kee Par v Molly Yap & Ors

HIGH COURT (PENANG) — PETITION NO 31-32-94
VINCENT NG J
11 NOVEMBER 1995

Succession *— Letters of administration — Application for — Citation of beneficiaries who have refused to take out letters of administration or renounce their right — Whether letters of administration should be given to joint administrators*

Succession *— Letters of administration — Priority to petition — Whether lawful widow has first priority to petition*

The deceased died intestate in 1993, leaving behind his second wife, L (the fourth party cited), and four children (the petitioner and the first to third parties cited). L is the stepmother of the four children. The petitioner applied for letters of administration of the estate of the deceased to be granted to him and cited the other beneficiaries ('parties cited') who resisted his application. The parties cited did not give any valid reasons as to why the petitioner should not be granted letters of administration nor provide sufficient information of the deceased's other alleged accounts and immovable properties. The parties cited only stated that the remaining balance of the estate was only worth RM833.79. The petitioner challenged this amount and alleged that in 1990, the deceased had £1.6m and other assets both in Malaysia and overseas. The petitioner further alleged that the parties cited had acted in cohort to prevent proper administration of the deceased's estate. At the hearing, it was agreed that letters of administration may be granted but the parties cited contended that it should be granted jointly to the petitioner and L.

Held, allowing the application:

(1)There was not one single valid reason given by the parties cited as to why the petitioner should not be granted letters of administration. The reason given by the parties cited that the deceased's estate was paltry appeard improbable (see p 223H–I).

(2) The contention by the parties cited that L as the deceased's lawful widow had first priority to petition was wholly misconceived. Unlike a male spouse, a female spouse has equal rights with, but no priority over her child or children by the deceased, to petition for letters of administration (see p 224B–C).

(3) In any case, s 30 of Probate and Administration Act 1959 gives the court a wide discretion as to persons to whom administration is to be granted, enabling the court to pass over a person otherwise entitled to a grant, and any such administration may be limited in any way the court thinks fit. In granting general or limited administration of estates, the court must have regard to the

rights of all persons interested in the estate or to the proceds of its sale (see p 224G–I). A

(4) L should not be appointed a co-administrator as she is illiterate and would be a hindrance to the petitioner's quest to trace the property of and the transactions done by the deceased in his lifetime. It had been alleged that she may have intermeddled in the estate, which may put her in a position of conflict between her interest as an administratrix and her personal interest in the money or the property held by her (see p 225D–E). B

(5) The parties cited had been given notice by the petitioner to renounce their right to take out letters of administration as they have declined to do so. They had refused to renounce their right and refused to apply for letters of adminstration. Consequently, adverse consequences ought rightly to flow against the right of the parties cited to a grant of letters of administration. L should not be allowed to decline to take out letters of administration on the alleged ground that the estate was only worth a paltry amount, but yet insist that she be made a co-administrator of the estate (see p 226A–B). C D

(6) The petitioner would be allowed to take out leters of administration as the sole administrator. He would bear the costs and expenses to be incurred on taking out letters of administration, tracing the properties and administration of the estate. Should the estate be found to be substantially above the alleged value, the petitioner as administrator would be indemnified on such costs and expenses by the estate (see p 226D–E). E

[Bahasa Malaysia summary F

Si mati telah meninggal dunia tanpa wasiat pada tahun 1993, meninggalkan isteri keduanya, L (pihak keempat yang disitasi), dan empat orang anak (pempetisyen dan pihak pertama ke ketiga yang disitasi). L adalah ibu tiri kepada empat orang anak itu. Pempetisyen memohon surat mentadbir harta pusaka si mati diberi kepadanya dan mensitasi benefisiari yang lain ('pihak-pihak yang disitasi') yang menentang permohonannya. Pihak-pihak yang disitasi tidak memberi apa-apa sebab yang munasabah mengapa pempetisyen tidak harus diberikan surat mentadbir dan juga gagal memberikan maklumat yang mencukupi mengenai akaun-akaun dan harta takalih si mati yang dikatakan. Pihak-pihak yang disitasi hanya menyatakan bahawa baki harta pusaka itu cuma bernilai RM833.79. Pempetisyen mencabar penilaian itu dan mengatakan bahawa pada tahun 1990, si mati mempunyai £1.6 juta dan berbagai aset di Malaysia dan luar negeri. Pempetisyen juga mengatakan bahawa pihak-pihak yang disitasi telah berpakat untuk menghalang pentadbiran harta pusaka si mati yang seharusnya. Pada pembicaraan, adalah dipersetujui bahawa surat mentadbir boleh dikeluarkan tetapi pihak-pihak yang disitasi menyatakan bahawa ia harus diberi bersama kepada pempetisyen dan L. G H I

Diputuskan, membenarkan permohonan itu:

(1) Tiada satu sebab yang munasabah telah diberi oleh pihak yang disitasi mengapa pempetisyen tidak harus diberi surat mentadbir. Sebab yang diberi oleh pihak yang disitasi bahawa harta pusaka si mati adalah tidak bernilai tidak mungkin benar (lihat ms 223H–I).

(2) Hujah pihak yang disitasi bahawa L sebagai balu si mati mempunyai prioriti utama untuk mempetisyen adalah salah jangka keseluruhannya. Berlainan daripada seorang suami, seorang isteri mempunyai hak bersamaan dengan, tetapi tidak ada prioriti melampaui anak atau anak-anak si mati, untuk mempetisyen bagi surat mentadbir (lihat ms 224B–C).

(3) Apa sekalipun, s 30 Akta Probet dan Pentadbiran 1959 memberikan mahkamah budi bicara yang luas tentang orang yang kepadanya pentadbiran boleh diberikan, dan ini membolehkan mahkamah melepasi seorang yang sepatutnya berhak menerima surat pentadbiran, dan sebarang pentadbiran sedemikian boleh dihadkan oleh mahkamah dalam apa cara yang difikirkan perlu. Dalam memberikan kuasa pentadbiran harta pusaka am atau terhad, mahkamah mesti mengambil kira hak kesemua orang yang berkepentingan di dalam harta pusaka itu atau hasil jualannya (lihat ms 224G–I).

(4) L tidak harus dilantik sebagai pentadbir bersama kerana beliau tidak berpelajaran dan merupakan satu penghalang kepada usaha pempetisyen mengesan harta dan transaksi yang dibuat oleh si mati semasa hayatnya. Terdapat pengataan bahawa beliau telah bercampur tangan dalam harta pusaka itu, dan ini mungkin meletakkannya dalam kedudukan konflik di antara kepentingannya sebagai seorang pentadbir dan kepentingan persendiriannya di dalam wang atau harta yang dipegang olehnya (lihat ms 225D–E).

(5) Pihak yang disitasi telahpun diberikan notis oleh pempetisyen untuk melepaskan hak mereka untuk memohon surat mentadbir kerana mereka telah enggan berbuat demikian. Mereka enggan melepaskan hak mereka dan enggan memohon untuk surat mentadbir. Oleh itu, kesan buruk sepatutnya bertindak terhadap hak pihak yang disitasi untuk menerima surat mentadbir. L tidak patut dibenarkan enggan memohon untuk surat mentadbir atas alasan bahawa harta pusaka itu rendah nilainya, tetapi bertegas bahawa beliau dijadikan pentadbir bersama bagi harta pusaka itu (lihat ms 226A–B).

(6) Pempetisyen dibenarkan mengambil surat mentadbir sebagai pentadbir tunggal. Pempetisyen akan menanggung kos dan perbelanjaan mengeluarkan surat mentadbir, mengesan harta dan pentadbiran harta pusaka itu. Jika nilai harta pusaka itu adalah jauh lebih tinggi daripada nilai yang dikatakan, pempetisyen

sebagai pentadbir akan ditanggung rugi atas kos dan perbelanjaan sedemikian oleh harta pusaka itu (lihat ms 226D–E).] A

[*Editorial note*: The parties cited have appealed to the Court of Appeal.]

B

Notes

For cases on letters of administration, see 11 *Mallal's Digest* (4th Ed) paras 1645–1701; [1991] Mallal's Digest 1921; [19930 Mallal's Digest 1264; [1994] Mallal's Digest 2092.

C

Cases referred to

Biggs, In the Estate of [1966] 1 All ER 358
Chia Teck Liang v Tan Soo Khiang [1936] MLJ 185
Govindasamy Pillay & Sons Ltd v Lok Seng Chai & Ors [1961] MLJ 89
Grundy, Re [1868] LR 1 P & D 459 D
Ingall v Moran [1944] KB 160
Newsham, In the Estate of [1966] 3 All ER 681
S, Re [1967] 2 All ER 150

Legislation referred to E

Distribution Act 1958
Probate and Administration Act 1959 s 30

KL Ong (*Ghazi & Lim*) for the petitioner.
GS Parameswary (*Tay, Tee & Nasir*) for the parties cited. F

Vincent Ng J: The deceased, Yap Kuan Keat, died on 4 March 1993 leaving behind his second wife, Leong Lian Ho, and four children, namely Yap Kee Par, Molly Yap, Nancy Yap and Alan Yap Kie Leng. Leong Lian Ho ('Mdm Leong') was the stepmother of the four children. G

The petitioner who is one of the deceased's sons has applied for letters of administration ('LA') of the estate of the deceased to be granted to him. He has cited the other beneficiaries (parties cited) who have resisted his application.

The parties cited have not given any valid reasons as to why the petitioner should not be granted LA except to say that there is only a sum of RM833.79 remaining in the deceased's estate. The petitioner has at all times alleged that this is untrue as the deceased had substantial cash and immovable assets both in Malaysia and overseas prior to his death. He had deposed in para 11 of his supporting affidavit that: 'I verily believe that there is a conspiracy among Molly, Alan, Nancy and Mdm Leong to prevent a suitable person from properly administering the estate and to query the sudden loss of substantial funds. It is also almost impossible to believe that my father who had £1.6m to his name in 1990 is reduced to H I

A assets worth only RM833.79, at the time of his death.' The petitioner's solicitor had repeatedly written letters to the parties cited to inquire as to whether they were willing to renounce their right to the LA but to no avail. The petitioner's solicitor has also made various attempts to ascertain from these beneficiaries the immovable properties belonging to the estate. The parties cited have neglected or refused to provide any information save to say that at the time of his demise, the deceased left only RM833.79 in an account held jointly with Mdm Leong at the Development Bank of Singapore. (See exh 'AYKL 1' of affidavit of Dr Alan Yap Kie Leng affirmed on 5 December 1994 (encl 19).)

In his affidavits referred to me, the petitioner gave his reasons why he thought it was impossible for the deceased to have only that amount in the bank. He also said, that the parties cited had failed, despite repeated requests, to furnish statements of the deceased's other alleged accounts, or to account for the contents of the safe deposit box, save only that Molly Yap had revealed that the deceased's coin collection was amongst the valuables removed from the safe deposit box. They have also failed to render details of the deceased's several immovable properties in Malaysia and England and what happened to them.

Before me, at the hearing, it was eventually agreed by the parties cited that LA may be granted, but they then contended that it should be granted jointly to the petitioner and the wife of the deceased, Mdm Leong.

The petitioner objects to Mdm Leong being made a joint administrator of the estate, as she was not the lawful wife of the deceased and appeared to have dealt with his father's assets in cohort with Alan Yap. Further, it will only put her in a position of conflict for she may have already caused loss to the estate. The petitioner, therefore, prayed that the court grant him the locus standi to make inquiries and to gain access to the deceased's assets, as the reluctance of the parties cited to take out LA and their objections to his application for LA was solely, according to him, to prevent him from obtaining LA to trace the true worth of the estate.

The parties cited strenuously denied any allegation that they have misapplied the deceased's fund but said that any monies given to them by the deceased were outright gifts. Mdm Leong further averred that she is entitled to the assets because the properties or assets were held jointly in her name together with the deceased.

After careful study of the various affidavits and hearing the oral submissions of counsel, I find that there is not one single valid reason given by the parties cited as to why the petitioner should not be granted the LA. The reason given by them that there is only a balance of RM833.79 remaining in the deceased's estate appears improbable. If it were true as alleged that this is the amount remaining, they should have no objections to the application for LA by the petitioner, as they would have nothing to lose and would not be prejudiced.

The petitioner should be allowed a chance to trace the assets of the deceased if any exists. He has no locus standi to represent the estate without an LA. (See *Ingall v Moran* [1944] KB 160, *Chia Teck Liang v Tan*

Soo Khiang [1936] MLJ 185, *Govindasamy Pillay & Sons Ltd v Lok Seng Chai & Ors* [1961] MLJ 89, *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* and *Mallal's Supreme Court Practice* — under O 80 Administration and Similar Actions.)

The parties cited had also contended that Mdm Leong was the deceased's lawful widow and she has the first priority to petition for the LA. This contention is wholly misconceived, as in my view, unlike a male spouse, a female spouse has equal rights with, but no priority over her child or children by the deceased, to petition for letters of administration.

Under the laws on intestate succession, persons who are entitled to the estate of a deceased in order of priority based on the closeness of relationship to the deceased are as follows:

(1) spouse;
(2) issues;
(3) parents;
(4) brothers or sisters;
(5) issues of brothers or sisters;
(6) grandparents; and
(7) uncles or aunts. (See Distribution Act 1958.)

Priority to petition for LA is determined, therefore, by the priority of entitlement to the estate. Each member of the seven classes above has the same rights vis-a-vis another member of the same class.

On priority of entitlement to the estate, a female spouse is entitled to ⅓ and her child (or children, to be shared equally among them) is entitled to ⅔ of the estate of the male spouse, whereas a male spouse is entitled (at least, under current law) to the whole of the estate of his deceased wife. It would thus follow that whereas a male spouse of a deceased female spouse is clothed with priority to petition for LA, the surviving female spouse enjoys no such priority over her child or children.

Nevertheless, be that as it may, s 30 of Probate and Administration Act 1959 gives the court a wide discretion as to persons to whom administration is to be granted, enabling the court to pass over a person otherwise entitled to a grant, and any such administration may be limited in any way the court thinks fit. In granting general or limited administration of estates, the court must have regard to the rights of all persons interested in the estate of the deceased person or to the proceeds of its sale and, in particular, administration with the will annexed may be granted to a devisee or legatee. Where the deceased dies wholly intestate as to his estate, administration must be granted to one or more persons beneficially interested in the residuary estate if application is made for that purpose, unless the estate is insolvent or for any other special circumstances it appears necessary or expedient to appoint as administrator some person other than the person who would by law have been entitled to the grant.

One object which the court keeps in view is the expeditious and economical administration of estates of deceased persons (see *Re Grundy* (1868) LR 1 P & D 459). No broad rule of law can be laid down as to what the special circumstances are which enable the court to pass over a person otherwise entitled to a grant, each case must be decided upon its own merits, though the special circumstances ought to be confined to only circumstances directly affecting the administration of the estate (see *Re S* [1967] 2 All ER 150, *Re Knight* [1939] 3 All ER 928). Indeed in *In the Estate of Biggs* [1966] 1 All ER 358, a grant of LA to the deceased's niece was made, passing over an executor who had intermeddled but refused to prove the will. And, in *In the Estate of Newsham* [1966] 3 All ER 681, a grant was made, passing over a widow, so as not to prejudice an insurance claim. (See also G Raman *Probate and Administration in Singapore and Malaysia, Law and Practice* at p 51).

Mdm Leong should not be appointed a co-administrator as she is illiterate (not denied) and would be a hindrance to the petitioner's quest to trace the property of and the transactions done by the deceased in his lifetime. It has been alleged that she may have intermeddled in the estate, which may put her in a position of conflict. The petitioner had deposed in para 6 of his affidavit (encl 22) that the deceased had approximately £1.6m in 1990 in joint accounts with Mdm Leong, and this amount was in the account of the deceased when he was senile and bedridden, but Mdm Leong had wilfully refused to answer the petitioner's queries or to provide any information as regards the funds in the accounts. It is to be noted that Mdm Leong's affidavit in reply (encl 25) had acknowledged this fact, but merely stated that there was no substantial sums in her husband's name when he died.

Mdm Leong was a joint property owner with the deceased and had joint bank accounts with the deceased. Her interest as an administratrix will conflict with her personal interest in the money or the property held by her. There is no denial from Mdm Leong that she has failed to give an account of her management of the funds and assets of the deceased's estate. A letter from Standard Chartered Bank dated 30 March 1990 (exh 'YKP-1' of encl 13 affirmed by the petitioner) states that HK $6,797,382.71 was credited solely into her account on 17 January 1990. Furthermore, it would appear that she and Alan Yap (one of the parties cited) are united in refusing to agree to the petitioner's application for LA. It is also pertinent to note that the said letter of 30 March 1990 from Standard Chartered Bank seems to indicate that Mdm Leong's correspondence address was 'c/o Dr Alan Yap, Glendene Guildford Road, Cranleigh Surrey GU6 8PF, United Kingdom'. It is, therefore, reasonable for the petitioner to believe that Mdm Leong would act under the control and directions of Alan Yap, and thereby impede or prejudice the process of the proper tracing of the properties and administration of the estate, which, according to the petitioner, also comprise properties in foreign countries (see *In the Estate of Newsham).*

The parties cited had been given notice by the petitioner to renounce their right to take out LA as they have declined to do so. They have refused

to renounce their right and refused to apply for LA. Consequently, adverse consequences ought rightly to flow against the right of the parties cited to a grant of LA. In my view, Mdm Leong should not be allowed to blow hot and cold, so to say, that is, to decline to take out LA on the alleged ground that the estate was only worth a paltry amount, but yet, now to insist that she be made a co-administrator of the estate. I need only quote a passage in G Raman *Probate and Administration in Singapore and Malaysia: Law and Practice,* at p 84, where the author had expressed the following views:

> Where a person who has a prior right to grant of probate or administration delays or declines to take it, but will not renounce his right, he may be cited by a person having a right which is inferior to his, to accept or refuse the grant. This normally takes place where a person who is entitled to petition for letters of representation fails or neglects to do so, and as a result the administration of the estate is held up. This may cause loss to the beneficiaries of the estate, and it is to prevent waste that such citations are normally filed.

The petitioner has also undertaken to bear the whole cost and expenses to be incurred in the taking out of LA, tracing the properties and the administration of the estate, in the event that the estate is not found to be worth substantially above the alleged value.

In the event, I allowed the petitioner's application for LA on the estate of the deceased, as the sole administrator, but he is to bear the costs and expenses to be incurred in taking out LA, tracing the properties and administration of the estate. It was further ordered that should the estate be found to be substantially above the alleged value, then the petitioner as administrator will be indemnified on such costs and expenses by the estate, as is normal practice.

Lastly, the pending appeal by the parties cited against my decision herein poses two questions (one, strange and the other, interesting): (i) if the deceased's (the late Yap Kuan Keat) estate is truly worth only RM833.79, why then this appeal; and (ii) as this appeal appears to have been filed without leave to the Court of Appeal, would it not, if condoned, open the floodgates to similar appeals being filed on LA matters where the appellants themselves have asserted the estate to be worth not more than a paltry amount.

Application allowed.

Reported by CK Ong